

January 18, 2013

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: January 18, 2013

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
HOWREY LLP,) No. 11-31376DM
Debtor.) Chapter 11

ORDER ON MOTION FOR CERTIFICATION
OF CLASS CLAIM AND APPOINTMENT OF
CLASS REPRESENTATIVES AND CLASS COUNSEL

Pursuant to my Order Concerning Class Certification and Related Matters (the "Order") signed on December 5, 2012, and entered on December 7, 2012, in Langley v. Howrey LLP (Adversary Proceeding No. 11-03065, Dkt. No. 28), a schedule was established whereby Gail Adams ("Adams") would set forth legal and factual bases supporting her assertion that she should be appointed class representative for the pursuit of WARN Act claims (the "WARN claims") against Howrey LLP ("Debtor") and that she should be appointed class representative and her counsel, Blum Collins LLP ("Blum") should be appointed class counsel. In the Order Stephanie Langley ("Langley") was directed to supplement her similar motion filed in the adversary proceeding, setting forth her legal and factual bases that she should be appointed class

1 representative for the WARN claims and that her counsel, Outten &
2 Golden LLP ("Outten") should be appointed as class counsel.

3 Blum and Outten have filed various memoranda and declarations
4 on behalf of their respective positions and I have reviewed them
5 carefully. I also note that Allan Diamond, the Chapter 11
6 Trustee, has not opposed that class certification and has not
7 taken a position in favor of Adams and her counsel Blum or Langley
8 and her counsel Outten.

9 What remains for me to decide at this point is who should be
10 the WARN class representative and who should be the class counsel.
11 I am satisfied that under Fed.R.Civ.P. 23(a)(4), incorporated by
12 Fed.R.Bankr.P. 7023, that both Langley and Adams (joined by fellow
13 claimant Rami Dalal ("Dalal")) "will fairly and adequately protect
14 the interests of the class." I select Adams and Dalal primarily
15 because I select Blum as class counsel.

16 I have considered the factors under Fed.R.Civ.P. 23(g) and am
17 satisfied that both Blum and Outten have adequately identified and
18 investigated potential claims; both have experience in handling
19 class actions, other complex litigation and the types of claims
20 asserted here; both have adequate knowledge of the applicable law;
21 and both possess the resources that counsel will commit to
22 representing the class.

23 I am instructed further by Fed.R.Civ.P. 23(g)(1)(B) that I
24 should consider other matters pertinent to counsel's ability to
25 fairly and adequately represent the members of the class. Here a
26 factor in Outten's favor is that Langley has served and continues
27 to serve on the Official Creditors' Committee in Debtor's Chapter
28 11 case. I believe that is a positive factor, and in no way

1 presents a conflict for Langley to serve or Outten to act as her
2 counsel. On the other hand, I also have considered that Adams and
3 Dalal are two of nearly one hundred members of the class
4 represented by Blum. That strikes me as the factor that tips the
5 balance slightly in Blum's favor and merits my choice of Adams and
6 Dalal as the class representatives and Blum as class counsel.

7 I consider it appropriate to consider the fact that several
8 claimants' decisions to be represented by Blum should be given
9 deference and they should not be presented with Outten, counsel
10 they have not selected. I say this specifically rejecting the
11 Blum argument that if Langley is selected class representative and
12 Outten her counsel, those one hundred or so claimants will some
13 how opt out of the WARN claims class. This case is presently in a
14 very undesirable financial situation, with post-petition
15 financing expenses and administrative claims well into eight
16 figures and although the trustee is optimistic that contingency
17 fees will be recovered and threatened or actual adversary
18 proceedings will result in substantial recoveries, the plain fact
19 is that at present there is no reason to have great confidence
20 that there will be funds to pay members of the WARN class. Thus,
21 I perceive that representation of that class at this point may be
22 more of a curse than a benefit, but I am also satisfied that Adams
23 and Dalal and their counsel (like Langley and her counsel) are
24 fully informed of the facts and I am not going to second guess
25 their decision to press forward on the certification and the
26 selection of the class representatives and the class counsel.
27 Accordingly, the WARN class is certified, Adams and Dalal are
28 designated class representatives, and Blum is designated as class

1 counsel.

2 In conclusion, under my Order, the decision has now been made
3 so within five days from the date of issuance of this order,
4 Outten should file a dismissal with prejudice of the complaint in
5 the Langley v. Howrey adversary proceeding.

6 **END OF ORDER**
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